



**Montana Legislative Services Division**  
**Legal Services Office**

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DATE: September 18, 2014  
TO: Legislative Finance Committee  
FROM: Julie Johnson, Legal Services Office  
RE: MMIS Contract Amendment

The Legislative Finance Committee has asked me to review the contract amendment between the Department of Public Health and Human Services and Xerox regarding the revised work plan for the Medicaid Management Information System ("MMIS"). I have received a copy of the contract amendment (Amendment No. 5 of Contract #12-12-1-01-001-1), which has been submitted to the Centers of Medicare and Medicaid Services for approval. The amendment is incorporated into the original contract between the Department and Xerox and does not amend any provisions regarding Xerox's liability or the use of a subcontractor contained in the original contract.

The amendment does the following:

1. Extends the Contract.

- Instead of terminating February 28, 2019, the contract terminates May 31, 2020. The contract may be renewed at the Department's discretion. The Re-Planned Work Plan, which was approved by the Department on July 18, 2014, replaces the initial work plan.

2. Replaces the "Deliverables and Services to be Provided" Section.

- Incorporates the Re-planned Work Plan which supercedes the initial work plan of October 26, 2012. The Re-planned Work Plan has 26 payment milestones, just as the initial work plan.
- Prohibits an extension of performance deadlines unless mutually agreed upon by the parties.
- Acknowledges that the Department has limited resources with which to review deliverables and provides that any delay attributable to Xerox sending multiple deliverables to the Department for review will not be a breach or default on the part of the Department, and will not excuse Xerox from timely performance obligations.
- Provides for no-cost modifications to the initial scope of the project related to the Health Enterprise System and Line of Business functionality. (Replaces Amendment No. 2 with Exhibit 1/Attachment B-12).

3. Modifies the "Consideration and Payment" Section and does not Increase Payments to Xerox.

- Specifies the sums to be paid to Xerox for its successful implementation of each milestone as outlined in Attachment B-11. The amount to be paid to Xerox is the same amount originally to be paid under the initial contract.

4. Establishes Incremental Liquidated Damages and Cap.

- Incorporates Attachment B-13, which is a schedule of incremental liquidated damages for each of the 26 milestones, should they not be met by Xerox. The incremental liquidated damages "are reasonable estimates of the Department's damages that will result from Xerox's untimely performance of its obligations under the Re-planned Work Plan and will replace any previously incurred or assessed liquidated damages."
- Sets a cap on incremental liquidated damages at \$6.15 million. This sum applies to 26 milestones for which a sum of \$236,538.46 will be assessed against Xerox for each missed milestone. Incremental liquidated damages are in addition to other liquidated damages that may be assessed by the Department for missed deadlines under the Re-Planned Work Plan. The original liquidated damages provisions in the Contract are all still in place.
- Identifies 4 Key Project Milestones. If Xerox misses two of the four key project milestones "the Department may assess the sum of \$6.15 million less any liquidated damages previously assessed by the Department against [Xerox][for the 26 milestones]."

Pharmacy POS Production Implementation Acceptance	12/13/15
Operations Management - Claims Iteration Acceptance	6/2/16
Provider Iteration Acceptance	6/29/16
Acceptance Testing	5/30/17

- The \$6.15 million in incremental liquidated damages is in addition, and not in lieu of, other liquidated damages that may be assessed by the Department as provided in the original contract.

5. Reduces the Department's Costs for the Current Fiscal Agency Services Provided by Xerox by \$2.3 Million for Fiscal Year 2015.

- As part of the consideration for entering into Amendment No. 5, Xerox will

reduce the costs for its fiscal agent services contract by \$2.3 million fiscal year 2015 with no reduction in services. Xerox will also extend the current fiscal agent services contract, with no increase in costs to the Department until the new MMIS is implemented successfully on May 30, 2017.